

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Magdalena Azmitia	Team: Squad #3	CCRB Case #: 201902958	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 04/04/2019 5:45 PM	Location of Incident: Arnow Avenue between Cruger Street and White Plains Road	Precinct: 49	18 Mo. SOL 10/4/2020	EO SOL 5/21/2021	
Date/Time CV Reported Fri, 04/05/2019 11:19 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 04/05/2019 11:19 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Joseph Marquez	02847	932961	049 PCT
2. POM Joshua Marte	04923	951971	049 PCT
3. DTS Steven Glassman	6415	919111	MAN CT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Peter Giannini	16241	957623	049 PCT
2. LT Ty Tucker	00000	926229	111 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Joseph Marquez	Abuse: Sergeant Joseph Marquez stopped the vehicle in which § 87(2)(b) was an occupant.	
B.POM Joshua Marte	Abuse: Police Officer Joshua Marte stopped the vehicle in which § 87(2)(b) was an occupant.	
C.POM Joshua Marte	Force: Police Officer Joshua Marte used physical force against § 87(2)(b)	
D.POM Joshua Marte	Abuse: Police Officer Joshua Marte threatened § 87(2)(b) with the use of force.	
E.POM Joshua Marte	Abuse: Police Officer Joshua Marte frisked § 87(2)(b)	
F.POM Joshua Marte	Abuse: Police Officer Joshua Marte searched § 87(2)(b)	
G.SGT Joseph Marquez	Abuse: Sergeant Joseph Marquez searched the vehicle in which § 87(2)(b) was an occupant.	
H.POM Joshua Marte	Abuse: Police Officer Joshua Marte searched the vehicle in which § 87(2)(b) was an occupant.	
I.DTS Steven Glassman	Discourtesy: Detective Steven Glassman spoke discourteously to § 87(2)(b)	
J.POM Joshua Marte	Abuse: Police Officer Joshua Marte failed to provide § 87(2)(b) with a business card	
K.SGT Joseph Marquez	Abuse: Sergeant Joseph Marquez failed to provide § 87(2)(b) with a business card.	
§ 87(2)(g), § 87(4-b)		

### Case Summary

On April 5, 2019, § 87(2)(b) filed this complaint over the phone with the CCRB.

On April 4, 2019, at approximately 5:30 PM, on Arnow Avenue between Cruger Street and White Plains Road in the Bronx, § 87(2)(b) was driving his car when he was stopped by Sgt. Joseph Marquez and PO Joshua Marte of the 49<sup>th</sup> Precinct (**Allegations A and B, Abuse of Authority:** § 87(2)(g) PO Marte instructed § 87(2)(b) to get out of the car. When § 87(2)(b) questioned why he had to exit the vehicle, PO Marte allegedly began to pull him out of the vehicle (**Allegation C, Force:** § 87(2)(g) When § 87(2)(b) protested, PO Marte allegedly stated, “I’ll pull you out by your hair,” (**Allegation D, Abuse of Authority:** § 87(2)(g) § 87(2)(b) ultimately exited the vehicle, after which PO Marte allegedly patted his shoulders, torso, and legs down (**Allegation E, Abuse of Authority:** § 87(2)(g) PO Marte allegedly searched § 87(2)(b) s pants pockets, the waistband of his underwear, and the band of his socks (**Allegation F, Abuse of Authority:** § 87(2)(g) Simultaneously, Sgt. Marquez searched § 87(2)(b) s vehicle (**Allegation G, Abuse of Authority:** § 87(2)(g) PO Marte then also searched the vehicle (**Allegation H, Abuse of Authority:** § 87(2)(g) During that time, Lt. Ty Tucker of the 111<sup>th</sup> Precinct and Det. Steven Glassman of Manhattan Court Section (whose rank has since changed to a police officer), who were both working at the 49<sup>th</sup> Precinct at the time, arrived in their vehicle and assisted with the stop. Det. Glassman spoke to § 87(2)(b) and stated, “If you think they’re full of shit, you can fucking express that,” (**Allegation I, Discourtesy:** § 87(2)(g) PO Marte and Sgt. Martinez warned and admonished § 87(2)(b) and let him go. He was not arrested or issued a summons. PO Marte and Sgt. Marquez left the scene without providing § 87(2)(b) with their business cards (**Allegation J, Abuse of Authority:** § 87(2)(g) **Allegation K, Abuse of Authority:** § 87(2)(g) § 87(2)(g), § 87(4-b)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

The investigation obtained BWC footage from Lt. Tucker [BR 03].

### Findings and Recommendations

**Allegation (A) Abuse of Authority: Sergeant Joseph Marquez stopped the vehicle in which § 87(2)(b) was an occupant.**

**Allegation (B) Abuse of Authority: Police Officer Joshua Marte stopped the vehicle in which § 87(2)(b) was an occupant.**

It is undisputed that Sgt. Marquez and PO Marte stopped § 87(2)(b) s vehicle. § 87(2)(g) § 87(2)(g) testified that he had committed no traffic infractions before PO Marte and Sgt. Marquez stopped him [BR 02]. PO Marte approached the driver’s side window, and § 87(2)(b) asked why he was stopped because he felt he had done nothing wrong. PO Marte asked for his license and registration, and § 87(2)(b) asked again why he was stopped. PO Marte tapped the driver’s side mirror, which § 87(2)(b) noted was cracked. § 87(2)(b) explained that both of his side mirrors were cracked following a hit and run accident several weeks prior, and that he had already filed a police report about it.

Sgt. Marquez and PO Marte testified that they both observed § 87(2)(b) s vehicle speeding, swerving through traffic lanes, and crossing solid double yellow lines [BR 05]. Sgt. Marquez and PO Marte made the mutual decision to stop § 87(2)(b) Sgt. Marquez added that § 87(2)(b) s vehicle had cracked side mirrors but did not recall whether he made the observation before initiating the stop. PO Marte testified that he observed the cracked mirrors after § 87(2)(b) had stopped his vehicle [BR 04].

§ 87(2)(g)

**Allegation (C) Force: Police Officer Joshua Marte used physical force against § 87(2)(b)**

**Allegation (D) Abuse of Authority: Police Officer Joshua Marte threatened § 87(2)(b) with the use of force.**

It is undisputed that PO Marte instructed § 87(2)(b) to exit his vehicle. § 87(2)(g)

§ 87(2)(b) testified that after PO Marte asked for his documentation, he put his hands up, informed PO Marte that his driver's license was in his wallet in his right pants pocket and that he was going to take it out [BR 02]. PO Marte said, "Forget it," and told § 87(2)(b) to get out of the car. § 87(2)(b) questioned the instruction, and PO Marte reached into § 87(2)(b)'s car through the open driver's side window, unlocked the door, and opened it. § 87(2)(b) put his hands up and stated that the officers were violating his rights and that he did not feel safe stepping out of his vehicle. PO Marte unbuckled his seatbelt, then put one hand on § 87(2)(b)'s left underarm and one on the right side of his neck where it meets the shoulder and told him to exit the vehicle. § 87(2)(b) reiterated that he did not feel safe. PO Marte pulled § 87(2)(b) towards himself and told § 87(2)(b) "I'll pull you out by your hair," twice. § 87(2)(b) ultimately stepped out of the vehicle on his own.

PO Marte testified that § 87(2)(b) refused to provide his driver's license several times and began to move around towards the center console while yelling [BR 04]. PO Marte told § 87(2)(b) that he needed to stop moving around because PO Marte could not see where § 87(2)(b) was moving his hands. PO Marte then instructed § 87(2)(b) to calm down and to step out of the vehicle in order to deescalate the situation. § 87(2)(b) complied and got out of the vehicle on his own volition. PO Marte denied reaching into § 87(2)(b)'s vehicle to unlock the door or making physical contact with § 87(2)(b) as he exited the vehicle. PO Marte denied telling § 87(2)(b) "I'll pull you out by your hair." Sgt. Marquez's testimony was § 87(2)(g) that § 87(2)(b) was told to step out of the vehicle because of his behavior while driving, the minor infraction, his movements in the car, and his behavior towards PO Marte [BR 05].

Sgt. Marquez was not equipped with a BWC at the time of the incident, and PO Marte did not activate his BWC during the incident. As such, the investigation does not have video account of this part of the incident.

§ 87(2)(g)

**Allegation (E) Abuse of Authority: Police Officer Joshua Marte frisked § 87(2)(b)**

**Allegation (F) Abuse of Authority: Police Officer Joshua Marte searched § 87(2)(b)**

**Allegation (G) Abuse of Authority: Sergeant Joseph Marquez searched the vehicle in which § 87(2)(b) was an occupant.**

**Allegation (H) Abuse of Authority: Police Officer Joshua Marte searched the vehicle in which § 87(2)(b) was an occupant.**

It is undisputed that PO Marte frisked § 87(2)(b) and that PO Marte and Sgt. Marquez searched § 87(2)(b)'s vehicle. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) testified that after he exited the vehicle, PO Marte pushed him against the side of the car and instructed him to put his hands on the roof [BR 02]. § 87(2)(b) did not testify to any movements he made in his vehicle as the officers approached his car. In a written statement provided by § 87(2)(b) he denied having used marijuana at any point [BR 18]. PO Marte then patted down § 87(2)(b)'s shoulders, torso, and legs, entering all four of his pants pockets as well as the band of his socks. § 87(2)(b) had only money in his pants pockets at the time. The officers took § 87(2)(b) to the rear of the vehicle, after which he told PO Marte that he had never refused to provide his driver's license. PO Marte asked where the driver's license was, to which § 87(2)(b) stated that he thought it was in his pocket, but it was in the center console of the car under the radio. PO Marte and Sgt. Marquez searched § 87(2)(b)'s vehicle in the front seat on both the driver's side and passenger's side.

PO Marte testified that § 87(2)(b) provided his driver's license from his person after exiting the vehicle [BR 04]. PO Marte observed a bulge in § 87(2)(b)'s pocket and proceeded to pat § 87(2)(b)'s waistband and pants pockets. PO Marte felt that the bulge was § 87(2)(b)'s cell phone. PO Marte denied entering § 87(2)(b)'s pockets, shoes, or socks. Sgt. Marquez testified that he did not see whether PO Marte patted down or entered § 87(2)(b)'s pockets, as he was preoccupied with searching § 87(2)(b)'s vehicle [BR 05]. Sgt. Marquez also testified that he searched § 87(2)(b)'s vehicle immediately after § 87(2)(b) exited [BR 05]. However, Lt. Tucker's BWC footage showed that Sgt. Marquez searched the vehicle after watching PO Marte frisk § 87(2)(b) [BR 03]. Sgt. Marquez had smelled the odor of burnt marijuana upon approaching § 87(2)(b)'s vehicle at the beginning of the stop and saw that § 87(2)(b) was moving around the car as he approached. Sgt. Marquez stated that in his 1,100 arrests from car stops civilians often move around in the vehicle as officers approach in order to hide contraband such as narcotics or weapons. Once § 87(2)(b) was removed from the vehicle, Sgt. Marquez opened the passenger door and entered § 87(2)(b)'s vehicle with the intention to search for weapons or contraband within arm's reach of the driver's seat.

After frisking § 87(2)(b) PO Marte searched § 87(2)(b)'s car for weapons given that § 87(2)(b) had been moving his hands to the right before exiting the vehicle. PO Marte also noted that he smelled the odor of burnt marijuana when § 87(2)(b) had initially opened his window. PO Marte did not open any consoles or compartments inside the vehicle but searched for anything that would have been in plain view. PO Marte did not recover any weapons from § 87(2)(b)'s vehicle. PO Marte did not search the vehicle for marijuana because given that he smelled the scent of burnt marijuana and did not see a marijuana cigarette loose in the car, it was unlikely that he would recover any marijuana. PO Marte noted that § 87(2)(b) could have discarded the marijuana cigarette already and that PO Marte was not inclined to conduct an extensive search of a vehicle for a small marijuana cigarette that may or may not have been present.

Lt. Tucker's BWC video confirms that PO Marte frisked § 87(2)(b) although the view of the frisk is obstructed by § 87(2)(b)'s vehicle and it is unclear whether PO Marte searches § 87(2)(b) (IA 29 at 0:25 seconds) [BR 03]. The video also confirms that PO Marte initially entered § 87(2)(b)'s vehicle to retrieve his driver's license, as he is heard asking § 87(2)(b) where the license is (at 1:55 minutes). In the video, PO Marte is seen leaning into § 87(2)(b)'s vehicle through the open driver's door. However, PO Marte appears to continue searching the vehicle for two minutes. As Lt. Tucker was standing on the passenger's side of the vehicle, the view of PO Marte is obstructed and it is unclear exactly which parts of the driver's area of the vehicle he searches. Sgt. Marquez is also briefly seen leaning into the vehicle through the open front passenger's side door, although it is unclear what he does inside the vehicle or for how long (at 1:35 minutes).

The court ruled in *People v. Chestnut*, 43 A.D.2d 260 (1974) that the smell of marijuana smoke on its own can be sufficient to provide police officers with probable cause to search an automobile and its occupants [BR 07].

In *People v Newman*, 96 AD3d 34 (1st Dept 2012), the court reviewed circumstances in which an officer may justify a limited intrusion into a vehicle whose occupants have been removed and patted down [BR 08]. The court determined that the officers were justified in believing that there may be weapons in the vehicle because the defendants were moving around the vehicle as the officers approached. The movements were described as bending or ducking down, moving their heads, and “putting something down and picking something up.”

§ 87(2)(g)

**Allegation (I) Discourtesy: Detective Steven Glassman spoke discourteously to § 87(2)(b)**

In Lt. Tucker’s BWC video, attached to IA 29, Det. Glassman is seen speaking to § 87(2)(b) while PO Marte searches the vehicle [BR 03]. The audio is initially inaudible due to atmospheric noise. Det. Glassman is then heard saying, “Just give them the opportunity and then if you think they’re full of shit, you can fucking express that, but at least give them the chance before you just fucking explode,” (at 3:50 minutes). § 87(2)(b) did not testify to any discourteous language by Det. Glassman, noting that Det. Glassman calmed him down while speaking to him.

Det. Glassman testified that he had no independent recollection of the incident even after viewing Lt. Tucker’s BWC footage [BR 06]. Det. Glassman noted that, based on what he observed in the video, he did not intend to be discourteous to § 87(2)(b) but that he appeared to be attempting to explain to § 87(2)(b) that he should give the officers a chance to explain the stop before becoming upset.

NYPD Patrol Guide Procedure 200-02 notes that officers must respect the dignity of each individual and render services with courtesy and civility [BR 09].

NYPD Disciplinary case #2017-17276 notes that language which would ordinarily be inappropriate in dealing with civilians may be excused in the course of a violent confrontation [BR 10].

§ 87(2)(g)

**Allegation (J) Abuse of Authority: Police Officer Joshua Marte failed to provide § 87(2)(b) with a business card.**

**Allegation (K) Abuse of Authority: Sergeant Joseph Marquez failed to provide § 87(2)(b) with a business card.**

It is undisputed that neither PO Marte nor Sgt. Marquez provided business cards to § 87(2)(b) as § 87(2)(b) testified to the CCRB. § 87(2)(b) did not testify as to whether either officer provided their names verbally [BR 02].

PO Marte testified that he had not been issued business cards at the time of the incident [BR 04]. PO Marte introduced himself to § 87(2)(b) by name and rank but did not recall whether he did so at the onset of the stop or at the end. PO Marte did not provide his shield number and did not recall whether § 87(2)(b) wrote down his name or noted it anywhere else.

Sgt. Marquez testified that he had business cards in his vehicle during this incident, but that he was not obligated to provide a business card because the incident involved a car stop [BR 05].

Lt. Tucker's BWC footage ends immediately after PO Glassman's conversation with § 87(2)(b) and does not show the conclusion of the stop [BR 03].

New York City Administrative Code §14-174 outlines protocol for identification of all police officers engaging in law enforcement activities such as frisks and searches of persons or property [BR 11]. In such cases that do not result in an arrest or summons, officers who conduct law enforcement activities must offer a business card to the person who is the subject of those law enforcement activities.

NYPD Patrol Guide Procedure 203-09 also addresses the provision of officer identification in law enforcement activities that do not result in arrests or the issuance of summonses, including frisks and searches of persons or property [BR 12]. In such cases, procedure states that officers must offer business cards upon the conclusion of law enforcement activities unless exigent circumstances are present. In the event that an officers' supply of business cards becomes depleted, officers are to allow members of the public ample time to write down identification information.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party [BR 15].
- Sgt. Marquez has been a member of service for 16 years and has been a subject in 15 other CCRB cases with 37 allegations, one of which was substantiated.
  - Case 201403399 involved a substantiated search of a person allegation. The Board recommended Command Discipline, and the NYPD imposed the recommended penalty.
  - § 87(2)(g)
- PO Marte has been a member of service for eight years and has been a subject in six other CCRB cases with 17 allegations, one of which was substantiated.
  - Case 201508770 involved a substantiated frisk allegation. The Board recommended formalized training, and the NYPD imposed the recommended penalty.
  - PO Marte's CCRB history involves two previous vehicle search allegations, two previous frisk allegations, and two previous search of a person allegations.
    - Cases 201508829 and 201704122 contained vehicle search allegations, which were closed as victim uncooperative and unsubstantiated, respectively.
    - Case 201704122 involved an unsubstantiated frisk allegation.
    - Cases 201508770 and 201704122 involved unsubstantiated search of a person allegations.
- Det. Glassman has been a member of service for 23 years and has been a subject in 12 other CCRB cases with 25 allegations, two of which were substantiated.

- Case 9804946 involved substantiated allegations of a search of a person and other abuse of authority. The Board recommended command level discipline. The NYPD has not imposed any penalty.
- § 87(2)(g) [REDACTED].

### **Mediation, Civil and Criminal Histories**

- § 87(2)(b) [REDACTED] declined to mediate this complaint.
- On May 28, 2020, a requested was submitted to determine if a Notice of Claim was filed; confirmation from the Office of the New York City Comptroller will be forwarded upon receipt [BR 16].
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]

---

Squad No.: 3

Investigator: <u>Magdalena Azmitia</u>	<u>Investigator Magdalena Azmitia</u>	<u>June 4, 2020</u>
Signature	Print Title & Name	Date

Squad Leader: <u>Olga Golub</u>	<u>SL Olga Golub</u>	<u>06/04/2020</u>
Signature	Print Title & Name	Date

Reviewer: _____	_____	_____
Signature	Print Title & Name	Date